

UTAH
CAPACITY DEVELOPMENT PROGRAM

2nd Triennial
Report to the Governor of Utah

In Fulfillment of
Section 1420(c)(3)
of the
Safe Drinking Water Act (SDWA)

Prepared
by
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Salt Lake City, Utah
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1 INTRODUCTION

1.1 Triennial Program Report to the Governor and Annual Program Report to EPA

Every three years, EPA requires that the states submit State Capacity Development Program Reports to their Governors. The first reports were submitted in 2002. The second round of the triennial State Capacity Development Program Reports to the respective Governors are required by statute to be submitted by states to their Governors no later than September 30, 2005. The states are also required to make these reports available to the public.

In response to the Office of Inspector General's September 2003 Capacity Development Program Evaluation, EPA's Office of Water made a commitment to establish consistent reporting criteria for the annual reports by the states. Criteria were compiled to guide and assist the states in the development of their annual reports. The criteria are also intended to help EPA Regions maintain uniformity when assessing each State's implementation of its approved Capacity Development Program. And, the criteria are supposed to aid the states as they develop their triennial reports to their Governors.

1.2 Safe Drinking Water Act, State Primacy, and State Capitalization Grants

The Safe Drinking Water Act (SDWA) was established in 1974 with the intention of assuring safe drinking water in public water systems (PWS's) throughout the United States. SDWA authorized the Environmental Protection Agency (EPA) to delegate primary enforcement authority, or primacy, to any individual state deemed sufficiently capable to administer its state program of Public Water System Supervision (PWSS). Utah was granted primacy on February 28, 1980, the 46th entity (states, territories, etc.) to receive such designation by EPA.

The initial federal monies under SDWA from EPA to the states aided the states in regulation of PWS's with respect to EPA-promulgated maximum contaminant levels (MCL's). Minor amendments to SDWA in 1977, 1979, and 1980, and major amendments in 1986 and 1996 expanded federal focus from the original chemical contaminants of interest to additional concerns with drinking water. The first of the two most noteworthy revisions to SDWA occurred with the 1986 Amendments that focused on disease-causing microbial contaminants in drinking water and established minimum treatment requirements for all surface waters. These same 1986 Amendments prodded EPA to quicken the pace of MCL promulgation by specific direction to EPA to establish MCL's and MCLG's (maximum contaminant level goals) for 83 specific contaminants including synthetic chemical contaminants of ground water. The 1986 Amendments also addressed lead and copper contamination in drinking water at the consumer's

tap, principally as a result of distribution system and fixture corrosion.

The second of the two most noteworthy revisions to SDWA occurred with the 1996 Amendments. The 1996 Amendments implement stronger prevention programs, empower the states with greater flexibility, afford consumers access to better information ("right to know") in consistent format (Consumer Confidence Reports), and overhaul EPA's regulatory development process including how many and which contaminants are to be selected for regulation. The 1996 Amendments redirect drinking water contamination prevention efforts to new programs of source water protection, capacity development, and operator certification. And, the 1996 Amendments also establish federal funding for states and their PWS's through the Drinking Water State Revolving Fund (DWSRF). The Drinking Water State Revolving Fund (DWSRF) assists communities in drinking water treatment and protection in much the same way that wastewater treatment and clean water have been promoted through the Clean Water State Revolving Fund (CWSRF).

The 1996 Amendments to SDWA allow the option of designation of portions of a state's grant monies as *set-aside funds* for specific priority activities and other administrative requirements. As much as 10 percent of a state's capitalization grant may be used for implementation of source water protection, capacity development, and operator certification programs, as well as for the state's overall drinking water program [§1452(g)]. Up to 15 percent (no more than 10 percent for any one purpose) can be used for prevention projects in water systems, including source water protection loans, technical and financial assistance to systems as part of a state capacity development strategy, source water assessments, and wellhead protection [§1452(k)].

The 1996 Amendments to SDWA make it incumbent upon the states to adopt program modifications and additions prescribed by EPA. EPA designates these program requirements for the states as either *mandatory* or *voluntary*. Failure of a state to enact a *primacy-mandated* program by the allotted deadline can result in state forfeiture of *primacy* for its own Public Water System Supervision (PWSS) program and loss of the entire program capitalization grant. Failure to enact a so-called *voluntary* program calls for loss of only a portion of the program capitalization grant, typically 20 percent.

Utah and the other states regularly grapple with EPA compliance deadlines for both *primacy-mandated* and *voluntary* programs. The states' PWSS programs in 2005 alone have faced primacy continuance deadlines for EPA's totally revised federal data reporting schema and early implementation of the Stage 2 Disinfection By Products Rule. So-called *voluntary* program deadlines – deadlines linked to losses of only 20 percent or so of the capitalization grant program monies – have loomed in 2005 for the Drinking Water Revolving Fund (DWRF),

Operator Certification, and Capacity Development programs. The latter program's obligations include the FY 05 Annual Report to EPA and the 2nd Triennial Report to the Governor.

1.3 State-Level Capacity Development Programs

In the time leading up to the 1996 Amendments to SDWA, EPA became aware of demonstrated success in several states in reliably delivering safe drinking water. These states had each focused on improvements in the technical, managerial, and financial capabilities of their PWS's. The 1996 Amendments represent EPA's efforts to build nationally on this demonstrated success by imposing certain mandates on the states. Namely, in order to receive the full allotment of funds to which they are entitled under the DWSRF, states have had to develop:

1. A program to ensure that all new community and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate sufficient technical, managerial, and financial capacity to comply with national primary drinking water regulations (NPDWR's); and
2. A strategy to assist existing PWS's in acquiring and maintaining technical, managerial, and financial capacity to comply with SDWA requirements.

EPA's intent is that the states use DWSRF set-aside funds for their capability development and implementation efforts. EPA has chosen the program name Capacity Development although capability development more accurately reflects the program content. Capacity encompasses the technical, managerial, and financial capability of the water system to achieve, maintain, and plan for compliance with applicable drinking water standards given the available water resources and the characteristics of the service population. *Technical capacity* refers to the physical infrastructure of the water system, including but not limited to the adequacy of source water, infrastructure adequacy (source, treatment, storage, and distribution), and the ability of system personnel to implement the requisite technical knowledge. *Managerial capacity* refers to the management matrix of the water system, including but not limited to ownership accountability, staffing and organization, and effective linkages. *Financial capacity* refers to the financial resources of the water system, including but not limited to the revenue sufficiency, credit worthiness, and fiscal management and controls.

Failure of a state to meet the requirements of the provisions for Capacity Development that have been published by EPA subjects a state to a 20 percent withholding from its DWSRF allotment. In the several years since the 1996 Amendments, most states have identified and prioritized PWS's most in need of assistance in enhancing their technical, managerial, and

financial capacity. And, most states (including Utah) have begun to target deficient PWS's with technical and financial assistance.

The guidance that EPA was directed in the 1996 Amendments by Congress to provide to the states in establishment of their capacity development programs was published in a number of sources:

Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act Amendments of 1996. 1998. U.S. Govt. Pub. EPA 816-R-98-008.

Handbook for Capacity Development: Developing Water System Capacity Under the Safe Drinking Water Act as Amended in 1996. 1999. U.S. Govt. Pub. EPA 816-R-99-012

Developing Water System Managerial Capacity: Training Module. 2002. Drinking Water Academy and Environmental Protection Agency.

Capacity development is intended to be a commitment by the states on behalf of their PWS's to (i) protect public health by ensuring consistent compliance with drinking water standards, including federal and State regulations and other applicable standards of performance; (ii) enhance performance beyond compliance through measures that bring about efficiency, effectiveness, and service excellence; and (iii) promote continuous improvement through monitoring, assessment, and strategic planning. EPA's policy position is that all water systems, regardless of size or other characteristics, can benefit from a program of ongoing capability development. Capable water systems are better positioned to consistently comply with applicable standards and provide customers with safe and reliable water service. Furthermore, capable systems also are better positioned to meet other standards of performance that are generally accepted in the industry or required by other regulatory agencies – e.g., the aesthetic quality of water (taste, color, and odor), water pressure, water losses, or other measurable aspects of performance. To this end, the 1996 Amendments contain capacity development provisions for new and existing water systems.

2 UTAH'S CAPACITY DEVELOPMENT PROGRAM

2.1 Rule Promulgation Update

2.1.1 Authority

In Utah, the Drinking Water Board operates under authority granted in 1981 by Section 19-4-104 of the Utah Safe Drinking Water Act. The Utah Drinking Water Board is an 11-person board appointed by the Governor. The Board is empowered to adopt rules governing the design, operation, and maintenance of Utah's public drinking water systems. The Utah Capacity Development Program is codified in Utah Administrative Code *Rule 309-352 Capacity Development Program [Future Rule 309-800]*.

2.1.2 Fiscal Year 2005

There were no substantive changes to *R309-352 [Future 309-800] Capacity Development Program* in FY 2005.

2.2 Range of Program and Activities

2.2.1 Allocation of Budget Resources

The State of Utah allocates money to a specific Capacity Development set-aside fund in accordance with SDWA program guidelines. The State's fiscal year begins each calendar year on July 1st. From the available data that are tabulated for the State fiscal year July 1, 2004 – June 30, 2005, and the initial months of the subsequent State fiscal year through September 30, 2005, it appears that State expenditures in the period that corresponds to the federal 2005 fiscal year, October 1, 2004, to September 30, 2005, amounted to approximately \$45,000.

2.2.2 Drinking Water State Revolving Fund (DWSRF)

The Utah Capacity Development Program's principal activity is in support of the federal and State loan programs. In the period of time that corresponds to the State 2005 fiscal year, Utah closed 6 federal program loans, grants, and planning advances in the sum of \$8,882,500, and 8 State program loans, grants, and planning advances in the sum of \$2,899,000.

2.2.3 System Consolidation and Restructuring

In 1998, the Drinking Water Board authorized funds to develop Regional Water Management Plans. The Community Impact Board and the Community Development Block

Grant Board contributed additional monies to the project. Community as well as nontransient noncommunity water systems were evaluated with a focus on technical, managerial, and financial capability.

Plans were developed for 24 of Utah's 27 counties. The three counties for which county-wide regional plans were not developed – Salt Lake, Utah, and Davis Counties – have a preponderance of water systems so large as to have been determined by EPA and the Division of Drinking Water not to be in need of regional planning. The Regional Water Management Plans discuss possibilities of joint source protection efforts, sharing of managers, operators, equipment, and facilities (existing and proposed), and especially consolidation of water systems. For water systems with records of noncompliance, the Plans continue to serve as valuable resources of information on feasible alternatives of remedial action.

2.2.4 Training Efforts (Operator Certification, etc.)

A portion of Utah's Capacity Development Program funds is allocated to education and testing of drinking water distribution and treatment operators. Over 200 written examinations were administered in fiscal year 2005 for Grades I-IV distribution and treatment operators. Water distribution is the more popular examination and accounts for approximately 80% of the total number of administered examinations. Utah has approximately 2,000 certified operators.

2.3 State Capacity Development Program for New Water Systems

2.3.1 Background

The State of Utah's present day efforts in capacity development have their roots in the area of system viability, namely ***Rule 309-500-11 Financial Viability***, which became effective in 1998. The Rule stipulates:

Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the system will not generate sufficient funds to insure proper operation and maintenance of the system.

Guidance: To permit an evaluation in this regard, capital and operating cost estimates should be provided along with the engineering plans and specifications for any proposed project.

The State experience with application of the Rule was that the Rule was well-intentioned but that

a regulatory framework for adequate enforcement needed to be developed.

Congress recognized this circumstance on a national scale and the 1996 Amendments enacted a provision to move the states to action, namely:

Section 1420(a): STATE AUTHORITY FOR NEW SYSTEMS- *A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 1452 (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.*

To this end, Utah Code 19-4-104(1)(a)(v) was promulgated and specifically grants authority to the Drinking Water Board to make rules regarding the Capacity Development Program and it references Section 1420 of SDWA, the federal Safe Drinking Water Act. Utah's resulting Capacity Development Program Rule requires that new water systems demonstrate they have adequate technical, managerial, and financial capacity before they may be approved as a public water system (PWS). With its adoption, and establishment of an effective date of September 15, 1999, ***Rule R309-359 Capacity Development Program*** requires both new community and new nontransient noncommunity water systems to submit a Capacity Assessment Review, which is to include a Project Notification Form and a Business Plan (which is to consist of a Facility Plan, a Management Plan, and a Financial Plan).

The Facility Plan is intended to provide a description of the scope of the water services that will be provided by the proposed community or nontransient noncommunity water system and must include:

1. A description of the nature and extent of the area to be served and provisions for extending the water supply system to meet growth;
2. An assessment of current and expected drinking water compliance based on monitoring data from the proposed water source;
3. A description of the alternatives considered, including interconnections with other existing water systems, and the technical, managerial, financial, and operational reasons for the approach selected; and,
4. An engineering description of the facilities to be constructed, including the construction phases and future phases as well as future plans for expansion and an estimate of the full cost of any required construction, operation, and maintenance.

The Management Plan is intended to describe what is needed for the proposed community or nontransient noncommunity water system to provide for effective management

and operation of the system. It must include:

1. Documentation that the applicant has water rights, and the legal right and authority to construct, operate, and maintain the system;
2. An Operating Plan that describes the tasks to be performed in managing and operating the system including administrative and management organization charts, plans for staffing the system with certified operators, and provisions for an operations and maintenance manual; and,
3. Documentation of management credentials of operations personnel and documentation of cooperative agreements or service contracts including demonstration of compliance with the water system operator certification rule.

The Financial Plan is intended to describe the proposed community or nontransient noncommunity water system's revenues, cash flow, income, and debt for meeting the costs of construction and the costs of operation and maintenance for five years from the date the applicant expects to begin system operation.

After the Division deems that the information submitted by the applicant is complete, the Division conducts a Capacity Assessment Review. The applicant is notified in writing whether or not the proposed new system has met the Rule requirements for technical, financial, and managerial (TFM) capacity. ***R309-352 Capacity Development Program*** stipulates that no new community water system, nor nontransient noncommunity water system, shall be approved in the absence of demonstrated adequate capacity.

2.3.2 Most Recent Three-Year Record

In any given fiscal year, the Division of Drinking Water receives 20-30 inquiries from developers, landowners, and other entities about creation of new public water systems. In most such inquiries, the Division consciously promotes alternatives such as consolidation with, or annexation by, existing public water systems. ***R309-800 Capacity Development Program*** is written in straightforward language and the Division refers potential water system operators to this Rule to acquaint them with the formidable tasks involved in creation of a new water system.

Indicated in Table 1 are the new Utah PWS's from the past three fiscal years. These PWS's represent water systems that have completed all of the requirements and are now in the business of serving drinking water to the public. There are probably another 5-10 entities who have submitted proposals to the Division for creation of a PWS but who have not yet proceeded to engineering design or construction. Since the inception of ***R309-800 Capacity Development Program***, no submittals to the Division on behalf of prospective water system operators have

Table 1. New Systems (PWSID & Name) in the State within the Past Three Years.

<u>Utah Sys. #</u>	<u>PWSID</u>	<u>SystemName</u>	<u>PWS Date</u>	<u>SNC List Ever?</u>
25040		Barnes Bullets	07/01/02	
27088		Diamond Ranch	07/10/02	
11042	UTAH11042	Cedar Highlands Subdivision	07/23/02	Yes
15038		Taggarts Cafe	07/23/02	
02065		Doug Fife Scout Ranch	07/31/02	
13054		East Zion	07/31/02	
24028		Oaks Park Campground	07/31/02	
24018		Whiterocks Campground	07/31/02	
14062	UTAH14062	Delta Egg Farm	08/01/02	Yes
18154		Geneva Rock Products	08/01/02	
04055		Phillips Petre	08/01/02	
13044		Zion Ponderosa Ranch Cabins	08/01/02	
03112		Beaver Creek Lodge	08/02/02	
22134		Pacificorp Summit County	09/27/02	
18157		Herriman City	10/10/02	
11058	UT11058	Flying L Subdivision	11/20/02	Yes
13055		Zion Mountain Resort	11/20/02	
13037		New Paria Subdivision	11/21/02	
26070		Currant Creek Lodge	12/27/02	
18158		Barbary Coast Saloon	01/09/03	
09089		Turn-About Ranch	03/07/03	
25159		New Haven Girl's Home, Op Cert: 4/4/04	04/04/03	
13052		Duck Creek Pines	05/08/03	
20048		Whispering Pines	05/13/03	
07057		Valley Mobile Homes	07/25/03	
20071		JR Recreation Properties	08/08/03	
16013		River Canyon Cookhouse	09/17/03	
26095		Heber Valley LDS Camp	11/13/03	
02075		Mantua Recreational Camp	11/13/03	
25162	UTAH25162	Cedar Fort Rec. Center	01/14/04	Yes
01012		Arrowhead	07/19/04	
07070		Reid Ranch	07/26/04	
11060		West Slope	10/08/04	
24044		Mile High Mobile Home Park	10/15/04	
12024		Pacificorp – Currant Creek	12/06/04	
20063		Palisades Subdivision	12/20/04	
20057		Indian Ridge WCD	01/19/05	
23079		South Rim	02/09/05	
09093		Beaver Dam Village SSD	03/24/05	
22101		Deep Springs Water Company	04/15/05	
25165		Krall Foundation	04/15/05	
22138		Camp Marion	05/27/05	

been denied approval. Submittals of bad plans for new water systems have simply been averted. Capacity Development Program staff credit *R309-800 Capacity Development Program* for dissuading nonviable new water system applicants from even initiating the new water system application process.

2.4 State Capacity Development Program for Existing Water Systems

2.4.1 Background

Congress, in the 1996 Amendments to SDWA, worked from the premise that enhancing and ensuring the technical, managerial, and financial capabilities of small water systems is the best strategy for correcting and preventing noncompliance with public drinking water system requirements. To this end,

Section 1420(c): CAPACITY DEVELOPMENT STRATEGY- (1) IN GENERAL- *Beginning 4 years after the date of enactment of this section, a State shall receive only--(A) 90 percent in fiscal year 2001; (B) 85 percent in fiscal year 2002; and (C) 80 percent in each subsequent fiscal year, of the allotment that the State is otherwise entitled to receive under section 1452 (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.*

was included in the legislation to prompt states to adhere to this philosophy. Utah implemented the wishes of Congress on several regulatory fronts. The *State of Utah Administrative Rules for Public Drinking Water Systems* **Rule 309-705, Financial Assistance: Federal Drinking Water Project Revolving Loan Program**, has several components that interface with issues of system capacity and systems with histories of significant noncompliance. The purpose of **Rule 309-705, Financial Assistance: Federal Drinking Water Project Revolving Loan Program** is to establish criteria for financial assistance to public drinking water systems in accordance with a federal grant established under 42 U.S.C. 300j *et seq.*, federal Safe Drinking Water Act. The Rule defines an *eligible water system* as any community drinking water system, either privately or publicly owned, and nonprofit noncommunity water systems.

Historically, State financial assistance through **Rule 309-705** has been sought by water systems across the entire compliance spectrum – i.e., from significant noncompliance, as measured by a *not approved* State water system rating, to exemplary compliance, as measured by an *approved* State water system rating. An important stipulation of **Rule 309-705-4(3)(a)** is that no financial assistance is authorized for any project for a water system in significant noncompliance, as measured by a *not approved* rating, unless the project will resolve all outstanding issues causing the noncompliance. **Rule 309-705-5(3)** further requires that as part of the application and project initiation procedures, Board staff (i.e., Division staff) will prepare a

Capacity Development analysis of the applicant water system.

Thus, the elements of the State's Capacity Development Program for new community water systems and nontransient noncommunity (NTNC) water systems (see Section 2.3, State Capacity Development Program for New Systems) can be utilized in the analysis of those existing water systems in significant noncompliance.

2.4.2 Most Recent Three-Year Record

In each of the last three fiscal years, Capacity Development Program staff completed a number of Capacity Assessments for loan program applicants. These Capacity Assessments evaluate compliance, on the part of the water system applicant, with the tenets of *R309-800 Capacity Development Program*. In fiscal year 2003, the applicants for whom Capacity Assessments were conducted included the Billy Bethers, Herriman, Interlaken, Kanosh, Manti, Orem, Price River, and Twin Creeks S.S.D. water systems. In fiscal year 2004, the applicants included the Wilkinson, Pleasant Grove, and Logan public water systems. In fiscal year 2005, the applicants included the Central Iron County Water Conservancy District, Croydon, Magna, Manila, Snowville, St. George, and Woodland & Kolob Acres water systems.

3 STATE APPROACH TO IDENTIFIED NEEDS AND CONCERNS

3.1 Improvement Priority System (IPS)

3.1.1 Program Description

The State of Utah utilizes a system for assessing deficiency points against public water systems on the basis not only of the monitoring and reporting shortcomings addressed in the *EPA SNC List* but also a spectrum of other public health concerns. These Utah public drinking water systems are subject to more intense surveillance and encouragement of compliance than those on the *EPA SNC List* alone. The program is authorized under *State of Utah Administrative Rules for Public Drinking Water Systems* **Rule 309-150, Improvement Priority System Rule**, which enumerates IPS [Improvement Priority System] deficiency points for administrative violations, infrastructure construction irregularities, unauthorized water source or other infrastructure use, and other practices that are inconsistent with delivery of safe drinking water to public drinking water system users.

IPS points are typically assigned as a result of water system inspections (i.e., sanitary surveys). IPS deficiency points for failure to comply with monitoring and reporting requirements are another major category and are typically assigned as soon as the deviations from these requirements are noted in the State's data base. **Rule 309-150** requires that a community water system that is assessed more than 150 deficiency points on a sanitary survey must be classified by the Utah Division of Drinking Water as *not approved*.

3.1.2 Fiscal Year 2005

The Division of Drinking Water initiated a project in fiscal year 2004 to adapt sanitary surveys to PDA's for surveyor convenience and accuracy. During fiscal year 2005, a preliminary version of a PDA-based sanitary survey was distributed to local health department personnel and Division staff involved in sanitary surveys. A good number of PDA-based sanitary surveys were completed in fiscal year 2005. Complete migration of the sanitary survey program to PDA-based surveys and survey reports is anticipated in fiscal year 2006.

3.2 Utah Top 25 Significant Noncompliance (SNC) List

3.2.1 Origin of the List

In 1997 and 2000, EPA and the states developed lists of systems with a history of significant noncompliance (SNC) in the area of monitoring and reporting in anticipation of using

these lists as compliance tools. Four times per year, the State develops a *Utah Top [Worst] 25 Significant Noncompliance (SNC) List*, which is generated before regularly scheduled, quarterly meetings, and is a tabulation of the worst 25 scores of all public water system *IPS* scores (i.e., highest points). This list supplements the *EPA Significant Noncompliance (SNC) List*. It is not unusual for Utah water systems with severe technical, managerial, and financial challenges to repeatedly appear on this list quarter after quarter. In contrast, water systems with historical records of sufficient technical, managerial, and financial capabilities rarely appear on the list for more than one quarter in a row. An isolated incident, such as failure to complete the design approval process correctly for new water system infrastructure, or failure to take scheduled water samples, occasionally occurs among even the most capable water systems but is generally remedied as soon as the problem is brought to the attention of a technically, managerially, and financially capable public water system.

3.2.2 Fiscal Year 2005

For fiscal year 2004, Utah Compliance Assurance Program (CAP) quarterly meetings were held in August 2004, November 2004, February 2005, and May 2005.

3.3 Utah Rating Change List

3.3.1 Origin of the List

The utility of the *Utah Top [Worst] 25 SNC List* has been supplemented by the State's generation of an additional quarterly list entitled the *Utah [Water System] Rating Change List*. This list identifies water systems whose *IPS* scores have fallen below or exceeded the critical 150 *IPS* point threshold between *approved* and *not approved*. This list thus serves as a convenient method to identify on a quarterly basis those systems that either merit a return to *approved* status or warrant a change to *not approved* status relative to their previous quarter's status.

3.3.2 Fiscal Year 2005

In any given fiscal year, the four Utah quarterly CAP meetings (see Section 3.2.2) have the primary purpose of addressing the *EPA Significant Noncompliance (SNC) List* and the *Utah Top [Worst] 25 Significant Noncompliance (SNC) List*. A secondary function of the quarterly meetings is serving as a forum for discussion for public water systems whose ratings warranted change from *approved* or *disapproved*. Typically, each quarterly meeting is presented with at

least 10-15 proposed water system rating changes. In each case, the meeting's findings are officially sent to the affected water systems.

3.4 Review of Implementation of the Program

The Division of Drinking Water does not conduct regularly scheduled reviews of the implementation of its Capacity Development Program. There is a great deal of flexibility in program administration under *Rule R309-359 Capacity Development Program* and implementation merely evolves in response to water system applicant (new systems) and operator (existing systems) feedback. Non-substantive changes that have seemingly improved program implementation include the development of staff checklists for use in the review of new water system applicant business plans. The checklists are keyed to the required items enumerated in the Rule.

3.5 Modifications to the Program Strategy

The Division of Drinking Water has adopted one significant change in its administration of the Capacity Development Program since its inception in 1999 with *Rule R309-359 Capacity Development Program*. Experience has proved that a significant number of the elements of the statutorily-required business plan, which includes a facilities plan, management plan, and financial plan, cannot reasonably be required of new water system applicants at the preliminary stages especially of any but the smallest projects. Examples of elements for which the Rule may have unreasonably early deadlines are manager and operator identities, O&M manual submittals for treatment processes that may not have even been finalized, and detailed site plans. For large projects in particular, it is unlikely that new water system applicants would have this information at the feasibility study stage.

In recognition of this circumstance, the Division now reviews business plans from new water system applicants with less strictness and more accommodation than in the past. The initial review is now deemed preliminary and applicants receive a courtesy notification of what information is missing or deficient in accordance with *Rule R309-359 Capacity Development Program*. If the missing or deficient information does not reflect poorly on the viability of the applicant's proposed water system, the Division does not disapprove the business plan. Instead, the Division informs the applicant that additional information must be forthcoming by the time that the water system applies for the required Operating Permit to place the new infrastructure into public drinking water service. Thus, the applicant is afforded an additional window of time (from engineering design through construction) to gather and submit the remaining information

that the State requires. All risk is borne by the applicant because the State would not issue the infrastructure Operating Permit if the business plan were not completed to the satisfaction of the Capacity Development Program staff.

3.6 Availability of the Report to the Public

The Division of Drinking Water posts its annual Capacity Development Program Report to EPA and its triennial Capacity Development Report to the Governor on its web site at:

<http://www.drinkingwater.utah.gov/>

FY 2005 Report to EPA

on

Utah's Implementation of the Requirement for Demonstration

of

Technical, Managerial, and Financial Capacity

by

New Community Water Systems

and

New Nontransient Noncommunity Water Systems

The Utah Capacity Development Program

A SDWA Section 1420(b)(2) Report

Utah Division of Drinking Water

Salt Lake City, UT

September 30, 2005

